UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	Case No.: 4:16-cv-01551
JAMES C. HEARD, Defendant.	)	

UNITED STATES OF AMERICA'S COMPLAINT

The United States of America, pursuant to 31 U.S.C. § 3711(g)(4)(C), at the direction of the Attorney General of the United States, or her delegate, and at the request of the Secretary of the Treasury, or his delegate, files this Complaint against Defendant James C. Heard ("Heard") to reduce to judgment and collect outstanding civil penalties assessed against him for his willful failure to timely report his financial interest in a foreign bank account as required by 31 U.S.C. § 5314 and its implementing regulations, plus accrued interest on the assessed penalties, late payment penalties and associated fees. Additionally, the United States intends to proceed under the Federal Debt Collection Practices Act (28 U.S.C. § 3001 et seq.) to collect any judgment it obtains in this case, including the use of all appropriate pre-judgment remedies, post-judgment remedies and the additional surcharge as authorized by 28 U.S.C. § 3011. In support hereof, the United States alleges as follows:

JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1345 and 1355 because this action arises under a federal statute for the recovery of a penalty and the United States is the Plaintiff. Further, upon completion of service of process, this Court will have personal jurisdiction over Heard pursuant to Fed. R. Civ. P. 4(k). During the years at issue,

Heard owned several rental properties located in Houston, Texas. Heard listed an address in Houston, Texas as his home address of his federal income tax returns for tax years 2006 through 2011. Further, during the years at issues, Heard used a Houston based tax preparer to prepare his 2006 - 2011 federal income tax returns.

2. Venue is proper in this district under 28 U.S.C. § 1391(c)(3) because Heard, a United States citizen, is a resident of Greece and may be sued in any judicial district. Additionally, Heard has many Houston, Texas, contacts including owning property in Houston. Alternatively, venue may be proper under 28 U.S.C. § 1395.

HEARDS' FAILURE TO TIMELY REPORT HIS FINANCIAL INTEREST IN HIS FOREIGN BANK ACCOUNTS

3. 31 U.S.C. § 5314 authorizes the Secretary of the Treasury to require United States citizens to report certain transactions with foreign financial agencies. Under the statute's implementing regulations, "[e]ach United States person having a financial interest in, or signature authority over, a bank, securities, or other financial account in a foreign country shall report such relationship" to the IRS for each year in which such relationship exists. 31 C.F.R. § 1010.350(a).

4. To fulfill this requirement, a person must file a Form TD F 90-22.1, "Report of Foreign Bank and Financial Accounts," commonly known as an "FBAR." *See id.* For the 2006 - 2011 years at issue, an FBAR was due by June 30 "of each calendar year with respect to foreign financial accounts exceeding $10,000 maintained during the previous calendar year." 31 C.F.R. § 1010.306(c).[1]

[1] Beginning with the 2016 tax year, the due date of the FBAR form will be April 15. Pub. L. No. 114-41, § 2006(b)(11).

Heard's financial interest, beneficial interest and control over foreign accounts

5. During 2006 through 2011, Heard, a United States citizen, had a financial interest in, beneficial interest, control and signatory authority over numerous foreign bank accounts at (1) UBS AG in Switzerland, (2) UBS AG in Luxembourg, (3) HSBC Premier in Greece, (4) Schroders & Co. in Switzerland, (5) Banque SA in Switzerland, (6) Geniki Bank in Greece, (7) Bank of Cyprus in Greece and (8) Pireaus Bank in Greece.

6. Heard maintained the HSBC Premier, Geniki Bank, Bank of Cyprus and Pireaus Bank accounts in his own name.

7. During the 2006 through 2009 years, Heard had accounts at UBS AG in Switzerland ("UBS 1") and at Schroder & Co., Banque SA in Switzerland, ("Schroder 1") both in the name of Sawtooth Equities, Limited ("Sawtooth.")

8. During the 2008 and 2009 years, Heard had an account at UBS AG in Luxembourg ("UBS 2") in the name of Sawtooth.

9. Sawtooth was incorporated on June 23, 2003, in Tortola, British Virgin Islands. The Tortola office of the Mossack Fonseca & Co. (B.V.I.) Ltd. ("Mossack Fonseca") law firm performed the legal work in forming Sawtooth in Tortola.

10. Mossack Fonesca was the incorporator and registered agent for Sawtooth.

11. Although Sawtooth was incorporated in Tortola, its Memorandum of Association and Articles of Association forbade it from actually carrying on "Business with Persons Resident in the British Virgin Islands." Sawtooth was also not permitted to own real property in the British Virgin Islands.

12. All of Sawtooth's stock was owned by the JC Heard No. 3 Trust ("Heard Trust.")

13. On June 23, 2003, Heard, as Settlor, and Minerva Trustees Limited, as the original Trustee, established the Heard Trust. The beneficiaries of the Heard Trust are Heard, his wife and children. Minerva Trustees Limited was located in Jersey, Channel Islands.

14. The Heard Trust is a foreign trust.

15. Heard failed to disclose the Heard Trust to the IRS.

16. The Heard Trust was the owner of Sawtooth and Hammerhead Consultants ("Hammerhead").

17. In a Letter of Wishes dated July 26, 2005, Heard stated that it was his understanding that the Heard Trust would hold the Sawtooth and Hammerhead stock, and that he was to be regarded as the principal beneficiary of the Heart Trust.

18. Heard exercised control over and directed the assets in the Heard Trust.

19. Heard owned 50% of Hammerhead. The other 50% of Hammerhead was owned by Heard's brother-in-law. Hammerhead was also located in the British Virgin Islands.

20. Heard is the sole true beneficial owner of Sawtooth.

21. Heard was the beneficial owner of the "UBS 1", "UBS 2" and "Schroder 1" accounts held in the name of Sawtooth.

22. Heard used the Sawtooth "UBS 1" account to make personal purchases for himself, including a vehicle in November 2007 for $115,000.

23. Despite being the sole beneficial owner of the Sawtooth "UBS 1" account, Heard tried to conceal his vehicle purchase by executing a note to his wife and mother in-law in the same amount of $115,000.

24. Also in 2007, transfers were made to Heard's wife from Heard's Sawtooth "UBS 1" account.

25. In September 2008, Heard transferred $400,000 and $500,000 from the Sawtooth "UBS 1" account to his personal account at Geniki Bank in Athens, Greece.

26. Despite being the sole beneficial owner of Sawtooth "UBS 1" account, Heard tried to conceal the $900,000 transfers by executing promissory notes to his wife and mother in-law in the same amounts of the transfers, $400,000 and $500,000. However, the UBS 1 account statements referred to the $400,000 and $500,000 transfers as loans to shareholder.

27. In 2008, Sawtooth loaned in total $90,000 to Letaki Safaris. In 2010, this $90,000 note from Letaki Safaris was assigned to Heard individually.

28. In 2006- 2011, Heard worked for Naftomar Shipping and Trading Co. ("Naftomar.") Heard received funds from Naftomar as a result of his employment with it.

29. In 2007 through 2009, at least $1,875,501 due Heard from Naftomar was directly deposited the into Heard's Sawtooth "UBS 1" account.

30. Heard failed to include the $1,875,501 from Naftomar on his original federal income tax returns for the 2007 - 2009 tax years.

31. Heard was a sophisticated investor who maintained investment accounts in the United States.

32. Heard actively directed and controlled the investments in the "UBS 1", "UBS 2" and "Schroder 1" accounts.

Heard's foreign accounts balances exceeded $10,000 from 2006 through 2011 and his failure to disclose these accounts was willful

33. Heard knew that he had a "check the box" requirement to report his foreign bank accounts on his 2006 - 2011 tax returns.

34. Heard was specifically aware of the requirement to report his interest in foreign bank accounts on Schedule B, line 7a, of his federal income tax returns. Heard did not even want to

disclose his non-U.S. citizen wife's foreign bank account to the IRS. Heard even proposed filing his tax returns as married filing separate to avoid reporting an interest in a foreign bank account.

35. On October 23, 2007, Heard filed his 2006 federal income tax return. Heard failed to disclose his interests in foreign bank accounts on his 2006 return.

36. Heard reported $1,007 of interest income on his 2006 return, but failed to file a Schedule B, in order to conceal his interest in numerous foreign bank accounts.

37. In 2006, Heard had a financial interest in, and control over, the UBS 1, Schroders 1 and HSBC Premier accounts which had account balances exceeding $10,000. Thus, on or before June 30 of 2007, Heard was required to file an FBAR reporting his interest in the UBS 1, Schroders 1 and HSBC Premier accounts.

38. Heard failed to timely file FBAR for 2006 regarding UBS 1, Schroders 1 and HSBC Premier accounts.

39. Heard's failure to timely report his financial interest in the UBS 1, Schroders and HSBC Premier accounts for 2006 was willful.

40. On January 11, 2013, Heard filed a delinquent FBAR for the 2006 year reporting the following previously omitted foreign bank accounts:

Bank Name	Bank location	Account Number	Maximum Balance
HSBC Premier	Athens, Greece	XXX-XX3077	$ 275,599.74
UBS ("UBS 1")	Switzerland	XXX-XXXX4-01	$1,797,557.00
Schroders ("Schroders 1")	Switzerland	XXX496-1	$1,331,722.00

41. Clearly, during the 2006 year, the balances in the UBS 1, Schroders 1 and HSBC Premier accounts exceeded $10,000.

42. In 2007, Heard had a financial interest in, and control over, the "UBS 1", "UBS 2", "Schroders 1" and two HSBC Premier accounts which had account balances exceeding $10,000.

Thus, on or before June 30 of 2008, Heard was required to file an FBAR reporting his interest in the “UBS 1”, “UBS 2”, “Schroders 1” and two HSBC Premier accounts.

43. On November 24, 2008, Heard filed his 2007 federal income tax return. Heard failed to disclose his interests in any foreign bank accounts on his 2007 federal income tax return.

44. On Schedule B, Part III Line 7a of Heard’s 2007 federal income tax return, Heard denied having any foreign bank accounts. Despite having five (5) foreign bank accounts with balances exceeding $10,000, Heard checked the box on his 2007 return schedule B that he did not have an interest in any foreign bank accounts.

45. Heard failed to timely file FBAR for 2007 regarding the “UBS 1”, “UBS 2”, “Schroders 1” and two HSBC Premier accounts.

46. Heard’s failure to timely report his financial interest in the “UBS 1”, “UBS 2”, “Schroders 1” and two HSBC Premier accounts for 2007 was willful.

47. On January 11, 2013, Heard filed a delinquent FBAR for the 2007 year reporting the following previously omitted foreign bank accounts:

Bank Name	Bank location	Account Number	Maximum Balance
HSBC Premier	Athens, Greece	XXX-XX3077	$ 176,213.63
UBS (“UBS 1”)	Switzerland	XXX-XXXX14-01	$2,602,607.00
Schroders (“Schroders 1”)	Switzerland	XXXX96-1	$3,646,366.00
UBS (“UBS 2”	Switzerland	XXX-XX7744	$ 10,523.50
HSBC Premier	Athens, Greece	XXX-XXX706	$ 36,861.53

48. Clearly, during the 2007 year, the balances in the “UBS 1”, “UBS 2”, “Schroders 1” and two HSBC Premier accounts exceeded $10,000.

49. In 2008, Heard had a financial interest in, and control over, the “UBS 1”, “UBS 2”, “Schroders 1” Geniki Bank and HSBC Premier accounts which had account balances exceeding $10,000. Thus, on or before June 30 of 2009, Heard was required to file an FBAR reporting his interest in the “UBS 1”, “UBS 2”, “Schroders 1”, Geniki Bank and HSBC Premier accounts.

50. On November 20, 2009, Heard filed his 2008 federal income tax return. Heard failed to disclose his interests in any foreign bank accounts on his 2008 federal income tax return.

51. On Schedule B, Part III Line 7a of Heard's 2008 federal income tax return, Heard denied having any foreign bank accounts. Despite having five foreign bank accounts with balances exceeding $10,000, Heard checked the box on his 2008 return schedule B that he did not have an interest in any foreign bank accounts.

52. Heard failed to timely file FBAR for 2008 regarding the "UBS 1", "UBS 2", "Schroders 1", Geniki Bank and HSBC Premier accounts.

53. Heard's failure to timely report his financial interest in the "UBS 1", "UBS 2", "Schroders 1", Geniki Bank and HSBC Premier accounts for 2008 was willful.

54. On March 25, 2012, Heard filed a delinquent FBAR for the 2008 year reporting the following previously omitted foreign bank accounts:

Bank Name	Bank location	Account Number	Maximum Balance
HSBC Premier	Athens, Greece	XXX-XX3077	$ 63,150.33
UBS ("UBS 1")	Switzerland	XXX-XXXX14-01	$1,884,641.00
Schroders ("Schroders 1")	Switzerland	XXX496-1	$3,221,806.00
UBS ("UBS 2"	Luxembourg	XXX4921	$1,517,416.00
Geniki	Voula, Greece	XXXXXXX80-0	$ 557,304.00
HSBC Premier	Athens, Greece	XXX-XXX077	$ 55.90

55. Clearly, during the 2008 year, the balances in the "UBS 1", "UBS 2", "Schroders 1", Geniki Bank and HSBC Premier accounts exceeded $10,000.

56. In 2008, the IRS was investigating UBS regarding tax evasion on behalf of American clients. As part of that investigation, the IRS issued a John Doe summons to UBS for all for the names of its United States' clients.

57. On August 18, 2009, Heard expressed concern about the IRS investigation of UBS, in particular that the IRS would discover his UBS accounts.

58. On August 18, 2009, Heard admitted to his accountant, Jack Evans, he had foreign accounts that he failed to report on his federal income tax returns.

59. On this same date, Heard's accountant provided him the forms to report Heard's foreign accounts. To further conceal, and in an effort to keep the IRS from discovering, his foreign accounts, Heard did not timely file any FBAR reports for 2009, 2010 or 2011.

60. In a further effort to keep the hidden "Schroders 2" account from United States' authorities, Heard in 2009 directed Schroders Bank not to invest his funds in United States securities and signed a waiver to that effect.

61. Heard even failed to timely file his 2009, 2010, and 2011 federal income tax returns.

62. In 2009, Heard had a financial interest in, and control over, the foreign accounts at "UBS 1", "UBS 2", "Schroders 1", "Schroders 2" Geniki Bank, HSBC Premier and Bank of Cyprus which had account balances exceeding $10,000. Thus, on or before June 30 of 2010, Heard was required to file an FBAR reporting his interest in the "UBS 1", "UBS 2", "Schroders 1", "Schroders 2" Geniki Bank, HSBC Premier and Bank of Cyprus accounts.

63. Heard failed to timely file FBAR for 2009 regarding the "UBS 1", "UBS 2", "Schroders 1", "Schroders 2" Geniki Bank, HSBC Premier and Bank of Cyprus accounts.

64. Heard's failure to timely report his financial interest in the "UBS 1", "UBS 2", "Schroders 1", Geniki Bank and HSBC Premier accounts for 2009 was willful.

65. On October 25, 2012, Heard filed a delinquent FBAR for the 2009 year reporting the following previously omitted foreign bank accounts:

Bank Name	Bank location	Account Number	Maximum Balance
HSBC Premier	Athens, Greece	XXX-XX3077	$ 71,425.97
UBS ("UBS 1")	Switzerland	XXX-XXXX14-01	$ 359,532.00
Schroders ("Schroders 1")	Switzerland	XXX496-1	$1,958,681.00
UBS ("UBS 2"	Luxembourg	XXX4921	$1,359,174.00

Geniki	Voula, Greece	XXXXXXX880-0	$ 127,235.77
HSBC Premier	Athens, Greece	XXX-XX3077	$ 57.08
Schroders (“Schroders 2”)	Switzerland	XXX742-1	$1,603,831.00
Bank of Cyprus	Voula, Greece	XXXX5525	$ 154,874.27

66. Clearly, during the 2009 year, the balances in the “UBS 1”, “UBS 2”, “Schroders 1”, “Schroders 2” Geniki Bank, HSBC Premier and Bank of Cyprus accounts exceeded $10,000.

67. Subsequently, Heard closed the “UBS 1”, “UBS 2” and “Schroders 1” accounts.

68. In 2010, Heard had a financial interest in, and control over, the foreign accounts at “Schroders 2” Geniki Bank, HSBC Premier, Bank of Cyprus and Pireaus Bank which had account balances exceeding $10,000. Thus, on or before June 30 of 2011, Heard was required to file an FBAR reporting his interest in the “Schroders 2” Geniki Bank, HSBC Premier, Bank of Cyprus and Pireaus Bank accounts.

69. Heard failed to timely file FBAR for 2010 regarding the “Schroders 2” Geniki Bank, HSBC Premier, Bank of Cyprus and Pireaus Bank accounts.

70. Heard’s failure to timely report his financial interest in the “Schroders 2” Geniki Bank, HSBC Premier, Bank of Cyprus and Pireaus Bank accounts for 2010 was willful.

71. On October 25, 2012, Heard filed a delinquent FBAR for the 2010 year reporting the following previously omitted foreign bank accounts:

Bank Name	Bank location	Account Number	Maximum Balance
HSBC Premier	Athens, Greece	XXX-XX3077	$ 48,039.77
Geniki	Voula, Greece	XXXXXXX880-0	$ 112,846.31
HSBC Premier	Athens, Greece	XXX-XX3077	$ 57.08
Schroders (“Schroders 2”)	Switzerland	XXX742-1	$1,483,214.28
Bank of Cyprus	Voula, Greece	XXXX5525	$ 99,363.01
Pireaus	Athens, Greece	XXXX-XXXXXX-051	$ 32,246.87

72. Clearly, during the 2010 year, the balances in the “Schroders 2” Geniki Bank, HSBC Premier, Bank of Cyprus and Pireaus Bank accounts exceeded $10,000.

73. In 2011, Heard had a financial interest in, and control over, the foreign accounts at "Schroders 2" Geniki Bank, HSBC Premier, Bank of Cyprus and Pireaus Bank which had account balances exceeding $10,000. Thus, on or before June 30 of 2012, Heard was required to file an FBAR reporting his interest in the "Schroders 2" Geniki Bank, HSBC Premier, Bank of Cyprus and Pireaus Bank accounts.

74. Heard failed to timely file FBAR for 2010 regarding the "Schroders 2" Geniki Bank, HSBC Premier, Bank of Cyprus and Pireaus Bank accounts.

75. Heard's failure to timely report his financial interest in the "Schroders 2" Geniki Bank, HSBC Premier, Bank of Cyprus and Pireaus Bank accounts for 2010 was willful.

76. On November 16, 2012, Heard filed a delinquent FBAR for the 2011 year reporting the following previously omitted foreign bank accounts:

Bank Name	Bank location	Account Number	Maximum Balance
HSBC Premier	Athens, Greece	XXX-XX3077	$ 3,637
Geniki	Voula, Greece	XXXXXXX880-0	$ 102,804
Pireaus	Athens, Greece	XXXX-XXXXXX-051	$ 53,903
Schroders ("Schroders 2")	Switzerland	XXX742-1	$1,303,736
Bank of Cyprus	Voula, Greece	XXXX5525	$ 55,652

77. Clearly, during the 2011 year, the balances in the "Schroders 2" Geniki Bank, HSBC Premier, Bank of Cyprus and Pireaus Bank accounts exceeded $10,000.

78. The IRS began its examination of Heard in April of 2011.

79. Despite knowing the requirement to report foreign bank accounts, it was only after the IRS began its examination of Heard that in 2012 he started filing delinquent FBARs regarding his numerous foreign bank accounts.

80. In August of 2011, Heard transferred almost all of the funds in his Schroder 2 account to his non-U.S. citizen wife's account at Rahn and Bodmer Co., in Switzerland.

81. Heard's UBS account generated income taxable in the United States from interest, dividends and capital gains for 2006 - 2011.

82. Yet, Heard did not report the interest, dividends or capital gains from the UBS account on his original 2006 - 2011 income tax returns.

Heard's 2006 - 2011 FBAR Penalty assessments

83. 31 U.S.C. § 5321(a)(5) provides for the imposition of civil penalties for a willful failure to comply with the reporting requirements of Section 5314 – *i.e*, when the person maintaining a foreign account fails to timely file an FBAR reporting that account despite having an obligation to do so. For violations involving the willful failure to report the existence of an account, the maximum amount of the penalty that may be assessed is 50% of the balance of the account at the time of the violation or $100,000, whichever is greater. 31 U.S.C. § 5321(a)(5)(C)(i).

84. Due to Heard's willful failure to timely file FBARs reporting his financial interest in the UBS account for 2006 - 2011, a delegate of the Treasury Secretary assessed penalties against him pursuant to 31 U.S.C. § 5321(a)(5) on June 13, 2014, as follows:

Tax Year	Amount of Assessment
2006	$ 776,676
2007	$ 673,119
2008	$ 769,383
2009	$ 787,615
2010	$ 318,693
2011	$ 320,880
Total	$3,646,366

85. The IRS assessments of the FBAR penalties were timely. Pursuant to 31 U.S.C. § 5321(b)(1), the statute of limitations for the assessment of an FBAR penalty is six years from the date of the violation. The Form TD F 90-22.1, or FBAR, for the 2006 year was due on June 30, 2007. Thus, without any extensions, the last day for the assessment of the FBAR penalty for

2006 would have been June 30, 2013.[2] However, on January 25, 2013, Heard signed a consent to extend the time to assess the civil penalties under 31 U.S.C. § 5321 for the 2006 year until December 31, 2014.

86. The Form TD F 90-22.1, or FBAR, for the 2007 year was due on June 30, 2008. Thus, without any extensions, the last day for the assessment of the FBAR penalty for 2007 would have been June 30, 2014. However, on January 14, 2014, Heard signed a consent to extend the time to assess the civil penalties under 31 U.S.C. § 5321 for the 2007 year until December 31, 2014

87. A delegate of the Treasury Secretary also gave Heard notice and demand of the penalty assessments for 2006 - 2011.

88. Despite the notice and demand for payment, Heard has failed to pay the 2006 - 2011 FBAR penalties assessed against him. Therefore, interest and other statutory additions continue to accrue on the unpaid assessments.

89. As of November 13, 2015, Heard owes the United States $4,008,604.99 in penalties assessed under 31 U.S.C. § 5321, including interest and other statutory additions which have accrued and will continue to accrue as provided by law.

90. Likewise, this suit is timely because it was commenced within two years of the assessment date. Pursuant to 31 U.S.C. § 5321(b)(2), a suit to reduce to judgment an FBAR assessment must be commenced within two years from the date of assessment. Thus, the United States has until June 13, 2016, to timely file this suit.

[2] The 2008 FBAR statute of limitations for assessment would be the earliest without extensions since the 2008 year date would be June 30, 2015.

WHEREFORE, the United States of America requests that the Court enter judgment in favor of the United States against Edward Heard for his 2006 - 2011 FBAR penalty assessments in the aggregate amount of $4,008,604.99 as of November 13, 2015, plus accruals and such other and further relief as the Court deems just and proper.

KENNETH MAGIDSON
United States Attorney

/s/ Jon E. Fisher
HERBERT W. LINDER
Ohio Bar No. 0065446
JON E. FISHER
State Bar No. 550177-MA
Attorney, Tax Division
Department of Justice
717 N. Harwood, Suite 400
Dallas, Texas 75201
(214) 880-9754
(214) 880-9774 (facsimile)
Herbert.W.Linder@usdoj.gov
Jon.Fisher@usdoj.gov

ATTORNEYS FOR UNITED STATES